

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5332 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ARJANBHAI N DODIA

Versus

MADHUBHAI N., ADMINISTRATOR GRAM SEVAK

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Appearance:

MRS SANGEETA N PAHWA for Petitioner

SERVED for Respondent No. 1

MR HARIN P RAVAL for Respondent No. 2, 3, 4, 5, 6, 7

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE M.S.SHAH

Date of decision: 25/02/97

ORAL JUDGEMENT

Rule. Mr. Harin Rawal, learned Advocate waives service of rule on behalf of respondents No. 2 to 7. Respondent No.1 though served, has not chosen to appear before the Court.

2. In this petition, the petitioner has prayed for an appropriate writ, order or direction quashing and setting aside the order of compromise passed by the Civil Judge, Senior Division, Veraval in Special Civil Suit No. 82 of 1994 on 7.3.1995.

[3. Annexure 'A' to the petition is a copy of the plaint of Regular Civil Suit No. 82 of 1994 filed by the Administrator of Sukhpur Gram Panchayat. Reading the same, it is clear that the suit is filed against 22 persons, who are said to have encroached upon Revenue Survey No. 41/2 and 42 since last eight to ten months and some have started construction activities and some have started cultivating the land, without the permission of the Panchayat. It is also stated in the plaint that the aforesaid lands are gauchar lands and has been allotted since 1987 to the Gram Panchayat. Details of the encroachment made by the defendants are mentioned in paragraph 4 of the plaint. In paragraph 6 of the plaint, it is averred that the defendants are in group and have got influence, and if only notice is issued under the Panchayat Act, the proceedings are likely to take time and it is likely that the defendants may complete the construction in the meantime. It was urged that with a view to see that there is no further encroachment, the Court should pass an appropriate order (for which application below Exh.5 was tendered before the trial Court, vide annexure 'B' to the petition). Reading the contents of the plaint and application Exh.5, the trial Court passed an order to maintain statusquo and made the notice returnable on 17.12.1994.

4. It appears that by submitting Exh.29 on 7.3.1995, the respondent No.1, herein i.e. the very plaintiff who filed the suit against the encroachers, submitted a compromise purshis and requested the trial Court to take up the same on record and to pass appropriate order, as the matter has been settled between the parties. In the compromise application placed before the trial Court, it is contended that the land in question is a waste land and the defendants are in possession of the same since 40 to 50 years and since then, they are cultivating the lands. It is further averred that the said land cannot be used as Gauchar land. It is also mentioned that in the Revenue record, the lands are indicated as gauchar land and the plaintiff will co-operate for making appropriate changes in the revenue records. It was requested that the suit may be disposed of in so far as defendants No. 5,6,7,8,9 and 21 are concerned, who are respondents No. 2 to 7. ]

5. Learned advocate for the petitioner submitted that the Administrator and the respondents No. 2 to 7 have entered into the compromise in collusion with each other. It is the case of the plaintiff that the land is vested in the Government. Form No. 7/12 for the said land indicates that the lands are gauchar lands and the same is in the name of Gram Panchayat in the revenue records.

6. Section 108 of the Gujarat Panchayat ACT 1993 is the relevant section, which reads as under :-

108. Government may vest certain lands in panchayat.-

(1). For the purpose of this Act, the State Government may subject to such conditions and restrictions as it may think fit to impose, vest in a panchayat open sites, waste, vacant or grazing lands or public roads, streets, bridges, ditches, dikes and fences, wells, river-beds, tanks, streams, lakes, nallas, canals, water-courses, trees or any other property in the village vesting in the Government.

(2). xxx xxx xxx xxx xxx

(3). xxx xxx xxx xxx xxx

(4). Where any open site or waste, vacant or grazing land vesting in Government, has been vested by Government in a panchayat whether before or after the commencement of this Act, then it shall be lawful for the State Government to resume at any time such site or land, if it is required by it for any public purpose:

Provided that in case of any improvement of such site or land made by the panchayat or any other person, as the case may be, shall be entitled to compensation equal to the value of such improvement and such value shall be determined in accordance with the provisions of the Land Acquisition Act, 1894 (I of 1894).

7. Grazing lands are thus vested in the Panchayat, subject to conditions and restrictions. A minute reading of sub-section (4) above makes it clear that the lands

which vest in the Panchayat is for a limited purpose and the State Government can resume the land at any time, if it is required for any public purpose. Reading the scheme of the Gujarat Panchayats Act and the Bombay Land Revenue Code, it is very clear that the word "vest" has more than one meaning. In the case of STATE OF GUJARAT & OTHERS VS. THE BOARD OF TRUSTEES OF PORT OF KANDLA & ORS. reported in 20 GLR 732, this Court had an occasion to consider the meaning of the word "vest", and in paragraph 26, the Court held as under:-

"The aforesaid case law therefore supports our view that the term "vest" has more than one meaning and to find its exact connotation, we must look to the Scheme of the law and the context in which it is used. The setting in which it is used would lend colour to it and divulge the legislative intent. Viewed from this point of view we are satisfied that the vesting of property in the Board is for the limited purpose of administration, control and management only without the Central Government having divested itself of ownership."

8. In view of the aforesaid provision, it is very clear that the Administrator has entered into an agreement contrary to the provisions of law. By such an agreement, he has actively assisted the respondents to enjoy the possession of gauchar lands without any disturbance and hinderance. Not only that, but he has also suggested that he will assist the said defendants to see that the lands are mutated in their names. We have made it clear that 'vesting' certain lands in Panchayat is with absolute right of the Government to resume at any time, such site or land, if it is required by it for public purpose, and, therefore, it could not have been dealt with in the manner in which it is dealt with, by the Administrator.

9. In the result, we quash and set aside the the order of compromise passed by the Civil Judge, Senior Division, Veraval in Special Civil Suit No. 82 of 1994 on 7.3.1995, and we direct the trial Court to proceed with the matter in accordance with law. The trial Court is directed to dispose of the matter within a period of three months, and send its compliance report to this Court. Rule made absolute accordingly.

csm./ -----